IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23-01-2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.36730 of 2006
And
W.M.P.No.29352 of 2018

A.L.Basker .. Petitioner

- Vs. -

1.The Tahsildar,
Coimbatore North Taluk,
Coimbatore.

2.The Government of Tamil Nadu,
Represented by its Secretary,
Revenue Department,
Fort St. George,
Chennai-600 009.

3.The District Collector,
Coimbatore District,
Coimbatore.
(R-2&R-3 impleaded as per order
of Court made in WMP No.29351 of 2018
dated 26.9.2018) .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the first respondent in Memo No.L.Dis.7797/2006/A2 dated 7.4.2006 and quash the same and directing the first respondent to forthwith effect change of patta in favour of the petitioner in respect of G.S. No.280 of Kalappatti Village, Coimbatore North Taluk, Coimbatore

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District of an extent of 1.02 acres.

For Petitioner : Mr.Kandavadivel Doraisami

For Respondents : Mrs.R.Janaki,
Additional Government Pleader.

O R D E R

The memo dated 7.4.2006, issued by the Tahsildar, Coimbatore North, Coimbatore rejecting the claim of the writ petitioner for patta transfer is under challenge in the present writ petition.

2. The writ petitioner states that an extent of 1.02 acres in Government Survey No.280 of Kalapatti Village, Coimbatore North Taluk, Coimbatore was purchased by Mr.Chinnasamy from Mr.Rangan, son of Mr.Munian and his heirs for valuable consideration under a Sale Deed dated 10.4.1957, registered as Document No.483 of 1957. Mr.Chinnasamy, the purchaser of the property sold 52 cents within the 1.02 acres of land to one Mr.Murali on 1.8.1996 for valuable consideration under a Sale Deed, registered as Document No.4405 of 1996. Mr.Murali sold the 52 cents to Mr.Selvaraj, son of Mr.Palanisamy under a Sale Deed, registered as Document No.2652 of 1998 for valuable consideration and Mr.Selvaraj, son of Mr.Palanisamy executed General Power of Attorney in favour of Mr.D.Balasundaram to deal with

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the 52 cents in G.S. No.280. By Sale Deed dated 28.9.2004, registered as Document No.5000 of 2004, the writ petitioner purchased the 52 cents from Mr.Selvaraj and the Sale Deed was executed by his Power Holder Mr.D.Balasundaram. Thereafter, the writ petitioner is in uninterrupted possession and enjoyment of the 52 cents in G.S.No.280.

3. The learned counsel for the writ petitioner states that the writ petitioner submitted an application to the first respondent for transfer of patta in his name. The first respondent rejected the claim of the writ petitioner on the ground that the land belonged to Mr.Chinnasamy, son of Ranga Mathari under conditional patta No.206 and on the death date of Chinnasamy on 2.6.1998, the land was sold to the writ petitioner by the heirs of Ranga Mathari which is said to be in violation of the assignment conditions.

4. It is further contended by the learned counsel for the writ petitioner that the writ petitioner has not violated any such assignment conditions as he is the bona fide purchaser of the said land from the previous owner. In view of the fact that the purchase of the property by the writ petitioner was in accord with law, the name

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transfer in patta is to be necessarily effected by the Competent Authorities/Tahsildar. Under these circumstances, the writ petitioner is constrained to move the present writ petition.

5. The learned Additional Government Pleader, appearing on behalf of the respondents, made a submission that the land measuring 1.02 acres in S.F.No.280, Kalapatti Village, Coimbatore North Taluk, Coimbatore, stands classified as 'Dry Land' in the Government records. Even before the year 1957, the land was assigned to one Mr.Rangan, son of Munian for agricultural purpose with the condition that if the land is alienated by the assignee to any person within a period of ten years from the date of grant by way of sale, gift, mortgage of lease of any kind or after that period to any person who is not a member of the Scheduled Caste, the grant will be liable to be cancelled and resumed by the Government, who will be entitled to re-enter and take possession of the land.

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6. The original assignee Mr.Rangan, died intestate and his legal heirs by names Periya Rangan and three others sold the above land to one Mr.Chinnasamy as per document No.1453/1957, dated 10.4.1957. The purchaser Mr.Chinnasamy also belonged to the

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Depressed Class Community. So far as the sale of the land from the legal heirs of the deceased Rangan to Mr.Chinnasamy, the condition has not been violated. Mr.Chinnasamy, who belonged to a Depressed Class Community, sold an extent of 0.52 cents in the above S.F. No.280 of Kalapatty Village of one Mr.Murali, son of Muthusamy Naidu, who belongs to Non-Depressed Class Community as per document No.4405/1996, dated 1.8.1996 which is in violation of the assignment conditions.

7. Mr.Murali sold the land measuring 0.52 cents to one Mr. Ranganathan as per document No.2652 of 1998 dated 18.9.1998. The said Mr. Ranganathan sold the above portion of 0.52 cents to Mr. A.L.Basker (writ petitioner) as per document No.5000 of 2004 dated 28.9.2004. With regard to the remaining 0.50 cents in the same S.F.No.280, the land holder Chinnasamy died intestate and his legal heirs, who belong to the Depressed Class Community, sold the land to Mr.Narayanasamy Naidu and others as per document No.5986 of 1958 dated 9.12.1958 which is in violation of the conditions imposed in the patta. Mr.Narayanasamy Naidu and others sold the remaining 0.50 cents to Mr.A.L.Baskar (writ petitioner) as per document No.2558 of 2004 dated 21.5.2004. Thus, the writ petitioner Mr.A.L.Baskar had

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purchased the entire property measuring the total extent of 1.02 acres in S.F.No.280 of Kalapatty Village in his name. The writ petitioner applied for transfer of patta in his name based on the Sale Deed executed by the assessee while the writ petitioner is the purchaser of the assignment land.

8. The land was assigned to the Depressed Class Community with the condition that the land should not be sold to anyone other than the Depressed Class Community. The writ petitioner was informed this condition in the first respondent's Office L.Dis.No.7797/ 2006/A2, dated 7.4.2006 that the patta cannot be changed in the name of the writ petitioner as he is not belonging to the Depressed Class Community.

9. When the matter was listed for hearings on 2.1.2019 and 11.1.2018, the Tahsildar, who presented his case, was directred to submit a Status Report in respect of the prevailing situation in the said portion of the land. Pursuant to the directions of this Court, the Tahsildar Mr.S.Sivakumar, North Coimbatore filed the Status Report.

10. The additional counter-affidavit filed by the Tahsildar,

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Coimbatore North Taluk, Coimbatore Mr.S.Sivakumar states that the land in question, namely, S.F.No.280 measuring 0.41.5 hectares or 1.02 acres of land in Kalapatti West Village is classified as 'Dry Land' and the said land was called 'Dha Dha Kuttai' and later the said land was allotted to one Parattai @ Ranga Sakkilian, son of Munian by the Collector vide Collector's (D.R.No.18/1340) No.6/12.09.1930, as condition patta (Condition Patta No.206). The facts narrated in the counter-affidavit are reiterated in the additional counter-affidavit filed by the Tahsildar.

11. The learned counsel for the writ petitioner mainly contended that the writ petitioner, being the owner of the land, is entitled for transfer of name in the patta. It is further contended that the writ petitioner has submitted a proposal offering substitute land which is situated in the nearby locality. It is stated that the alternate land proposed by the writ petitioner is of more value than that of the land, which is under occupation of the writ petitioner, belongs to the Government.

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12. In this regard, the Tahsildar in his additional counter-affidavit states that the writ petitioner is offering substitute land at free

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of cost, which is classified as 'Residential' one and which is valuable and that the land in litigation does not have any approach road. It is contended that the proposal submitted by the writ petitioner cannot be considered as an alternate land offered by the writ petitioner, is classified as 'Residential Area'. In the event of considering such proposals, the same will be in violation of the judgment of the Hon'ble Supreme Court of India. Thus, the proposal cannot be considered at all.

13. The learned counsel for the writ petitioner states that this Court earlier directed the authorities to consider the proposal submitted by the writ petitioner for accepting the offer made by the writ petitioner by providing an alternate land, which belongs to the writ petitioner. Under these circumstances, the Government has to consider the offer made by the writ petitioner before initiating any action in respect of the land, which is under possession and enjoyment of the writ petitioner and belongs to the Government.

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14. The learned counsel for the writ petitioner states that the portion of the land which was purchased by the writ petitioner, which was originally assigned by a Depressed Class person has no

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access and therefore, the same may not be useful for the implementation of the public schemes or welfare schemes in view of the fact that there is no access to the land, which is under possession and enjoyment of the writ petitioner, the Government has to consider the alternate proposal submitted by the writ petitioner by offering his own land which is situated in the residential locality and is of more value.

15. The first respondent/Tahsildar produced the photographs to establish that the portion of the land which was illegally purchased by the writ petitioner from the Depressed Class person is not utilised by the writ petitioner. The factory is not situated in the land belongs to the Government. The factory is situated in the patta land belongs to the writ petiioner. The land in question is kept vacant. Even during the inspection, which was conducted, last week, the Tahsildar informed that the said land still remains as a vacant land. This being the factum, the writ petitioner has no right whatsoever to claim assignment of the said land as the very purchase itself is in violation of the conditional patta granted in favour of the Depressed Class Community.

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16. This Court is of the considered opinion that the writ petitioner is running an industry in his own patta land and there is no dispute in respect of the patta land belongs to the writ petitioner. In addition to the patta land, the writ petitioner had purchased the Government land assigned in favour of the Depressed Class Persons. As per the conditions stipulated in the assignment, the Government land cannot be sold for a period of ten years from the date of assignment. Thereafter, the Depressed Class Person, under whose name the assignment stands, is at liberty to sell the land only to another Depressed Class Person and as per the condition, the said assigned land at free of cost cannot be sold to any other person other than the Depressed Class Community. In other words, the assigned lands cannot be sold to the Non-Depressed Class Community people.

17. In the present case on hand, the conditions of the assignment had been violated and therefore, the entire sale became null and void. Even during the inspection, the Tahsildar found that the said land remains as a vacant land and further the writ petitioner is running the industry only in his patta land and therefore, there is no impediment for the respondents to secure the Government land for the purpose of utilising the same for public purposes and in the interest of

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the public.

18. The impugned memo dated 7.4.2006, which relates to the claim of the writ petitioner for transfer of his name in the patta had been rejected. Therefore, the land remains in the name of the Government and as per the conditions, the Government is empowered to restore the land and take possession of the land and utilise the same for public purposes, as the very assignment of land granted was on certain conditions.

19. Once the conditions are violated, the Government is empowered to cancel the assignment and restore possession of the assigned land. The said condition is also stipulated in the assignment. Accepting the conditions, the assignee had taken possession of the land. Thus, violations, if any, subsequently is to be viewed seriously and therefore, the Government is entitled to recover the land even by evicting the persons, who all are under illegal occupation.

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20. In the present writ petition on hand, admittedly, the land was assigned in the name of the Depressed Class Person. The Depressed Class Person initially sold the land to another Depressed

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Class Person. However, the said land was sold thereafter to a Non-Depressed Class Person and the conditions of assignment were violated. Thus, the Government is empowered to restore the land by evicting the illegal occupations in respect of all such assigned lands.

21. The contention of the learned counsel for the writ petitioner that the writ petitioner has offered an alternate land in lieu of the assigned land, this Court is of an opinion that such decisions are to be taken at the Government level and this Court cannot issue any direction to accept the offer made by the writ petitioner. It is left open to pursue the proposals/representations, if any, with the Government for appropriate action. Even in such circumstances, it is the prerogative of the Government to take a decision either to accept the offer or to reject the same by assigning reasons. The Court cannot interfere in such policy decisions to be taken by the Government as the same is the prerogative of the Government to deal with the issues properly and in the manner known to law. Thus, the submissions made by the learned counsel for the writ petitioner that the proposal to accept the alternate land deserves no merit consideration as the decision is to be taken by the Government and this Court cannot offer any findings in that regard.

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22. At the outset, the impugned order was issued, rejecting the claim to transfer the name of the writ petitioner in the patta. The assignee, who was assigned with the Government land at free of cost, had violated the terms and conditions stipulated in the assignment. Thus, the very purchase of the assigned land by the writ petitioner is in violation of the assignment conditions and invalid.

23. Accordingly, the sale became invalid and as per the conditions of assignment, the Government is empowered to restore the possession of the land even by evicting the encroachers or persons, who all are under illegal occupations of all such assigned land. Such assigned land is now in possession and occupation of the writ petitioner, and the respondents are empowered to evict the writ petitioner from the premises and utilise the said public land for the welfare of the public and to implement the public schemes in accord with the decisions to be taken by the Competent Authorities.

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24. This being the factum of the case, the writ petitioner has not established any acceptable reason for the purpose of considering the relief, as such, sought for in the present writ petition and accordingly, the writ petition stands dismissed. However, there

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shall be no order as to costs. Consequently, connected miscellaneous petition is also dismissed.

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Index:Yes.
Internet: Yes.
Speaking Order
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To

1.The Tahsildar,
Coimbatore North Taluk,
Coimbatore.

2.The Secretary,
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Revenue Department,
Fort St. George,
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3.The District Collector,
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S.M.SUBRAMANIAM, J.

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